

A U S T I N C I T Y C O U N C I L

AGENDA



Thursday, July 27, 2006

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**Zoning and Neighborhood Plan Amendments
(Public Hearings and Possible Action)
RECOMMENDATION FOR COUNCIL ACTION**

ITEM No. 146

Subject: C14R-86-193(RCT) - Prominent Pointe II Restrictive Covenant Termination - Conduct a public hearing and approve a restrictive covenant termination for the property located at 8310 North Capital of Texas Highway (Bull Creek Watershed). Zoning and Platting Commission Recommendation: To approve termination of the restrictive covenant. Applicant: Spicewood Springs Associates and Prominent Northpoint, L.P. (Mark McAllister). Agent: Armbrust & Brown, L.L.P. (Amanda Morrow). City Staff: Sherri Sirwaitis, 974-3057.

**Additional Backup
Material**

(click to open)

- ☐ [Staff Report](#)
- ☐ [Restrictive Covenant Termination](#)

For More Information: Sherri Sirwaitis, 974-3057.

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14R-86-193(RCT)

Z.A.P. DATE: June 20, 2006

ADDRESS: 8310 North Capital of Texas Highway

OWNER/APPLICANT: Spicewood Springs Associates and Prominent Northpoint, L.P.
(Mark McAllister)

AGENT: Armbrust & Brown, L.L.P. (Amanda Morrow)

ZONING: LO, GR

TO: PUD

AREA: 10.2389 acres

SUMMARY STAFF RECOMMENDATION:

The staff recommends the applicant's request to terminate the restrictive covenant to eliminate the restrictions placed upon the property in question.

ZONING AND PLATTING COMMISSION:

6/20/06: Approved staff recommendation for restrictive covenant termination by consent (7-0, S. Hale, J. Gohil-absent); J. Martinez-1st, M. Hawthorne-2nd.

DEPARTMENT COMMENTS:

The applicant is requesting to terminate the public restrictive covenant for this property (Attachment A) that limits a restaurant (general) use to no more than 1100 square feet on the first floor; that limits a health and physical fitness studio or a reducing salon use to no more than 1200 square feet on the first floor; and that states that the restaurant (general) use and health and physical fitness studio or a reducing salon use together shall not exceed 2200 square feet and shall be limited to use by building tenants, their customers and clients, except for off-site delivery for the restaurant use.

The staff recommends the applicant's request to terminate the restrictive covenant because the intent of the covenant is no longer viable. The property in question is part of an application for the proposed Prominent Pointe II PUD. In the PUD request, the applicant is seeking to provide a unified office development on the site that will utilize existing and proposed office buildings. The applicant plans to develop a new office building paralleling the northwestern edge of the tract, along with a parking garage that will be constructed between the existing and new building. The proposed parking garage will provide parking for the overall development and will allow for a majority of the existing surface parking to be removed. The applicant proposes to place new improvements on the property in a way to minimize adverse impacts to the natural character of the property and to screen new structures from the Hill Country Roadway and from the existing neighborhood to the east (along Bluffstone Lane). The applicant is requesting some environmental modifications to the Land Development Code through this application that they have proposed to offset by providing an overall decrease in impervious cover for the site by approximately 0.6 acres, providing current water quality controls, dedicating a 7.5 acres conservation/preserve area to the City, removing much of the existing development in the CWQZ and WQTZ and Hill Country Roadway Corridor, restoring many previously disturbed areas with to a natural state with tree planting and re-vegetation, and by providing a 50-foot setback for the rimrock CEF which is currently unprotected. In addition, the applicant has asked for Hill Country Roadway Bonuses through the PUD application to increase the

allowable height in a moderate intensity zone of the Hill Country Roadway corridor to reduce overall impervious cover for the project.

The staff supports the proposed PUD request because it will allow the applicant to create a superior development on a tract of land that has topographical constraints. The proposed PUD will the reduce impervious cover amounts that were approved through the Prominent Point Tract and Bluffstone PUD developments by approximately 19% by removing surface parking area and constructing a parking garage on the site. The proposed development places the new building and parking garage along the western boundary of the property to allow a natural area to provide screening of structures on the site from Bluffstone Lane. In the new PUD, the applicant will provide water quality control meeting the current water quality requirements for water quality and detention. The Prominent Point II PUD development will remove parking that is currently located within the 100-foot Hill Country Roadway buffer and will restore this area to its natural condition. In addition, the developer will include the 40% buffer zone for the entire combined development and will dedicate the 7.5 acres Great Hill Phase "B" Tract as preserve/conservation area. The proposed PUD will also reduce the number of approved access points approved for the Prominent Point Tract and Bluffstone Tracts. Currently, there is one existing access driveway onto Loop 360 (Capital of Texas Highway) and one existing access driveway onto Bluffstone Lane. The approved Bluffstone PUD permitted two additional drives onto Bluffstone Lane. However, in this rezoning the applicant is requesting only one additional driveway access onto Bluffstone Lane. Finally, in the proposed PUD the applicant will provide trail access across the north and south edges of the site to permit the surrounding neighborhoods to have access to the Bull Creek railways through the project. The applicant proposes to improve the dead end area of Bluffstone Lane by providing curb and gutter, as well as large boulders or other obstructions to prevent unauthorized access and dumping that currently serves as a detraction for the neighborhood.

Therefore, the staff recommends the termination of this public restrictive covenant to allow the applicant to clear the title to the property in question. The conditions of the restrictive covenant under consideration will no longer be viable if the proposed rezoning for this property to PUD is approved by the Zoning and Platting Commission and City Council. The Prominent Point II PUD development that is proposed for this tract of land will provide superior use of the property in question than what was limited through the restrictive covenant in question.

The applicant agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	LO, GR	Office uses
<i>North</i>	PUD (Bluffstone PUD)	Undeveloped
<i>South</i>	P	Undeveloped
<i>East</i>	GR-CO, RR, SF-2	Undeveloped
<i>West</i>	I-RR	Bull Creek Watershed

AREA STUDY: N/A

TIA: N/A

WATERSHED: Bull Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

HILL COUNTRY ROADWAY: Yes

NEIGHBORHOOD ORGANIZATIONS:

46 - North Oaks Neighborhood Association
 53 - Northwest Austin Civic Association
 157 - Courtyard Homeowner Association
 184 - Bull Creek Homeowners Association
 328 - Yaupon Bluffs Community Association
 413 - Austin Great Hills Homeowners Association, Inc.
 426 - River Place Residential Community Association, Inc.
 439 - Concerned Citizens For P & B of FM 2222
 475 - Bull Creek Foundation
 511 - Austin Neighborhoods Council
 742 - Austin Independent School District
 747 - Great Hills Homeowner Association
 965 - Old Spicewood Springs Road Neighborhood Association

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C814-01-0096	GR, LR to PUD	12/04/01: Approved staff's recommendation of PUD zoning by consent (8-0, M. Casias-absent)	1/17/02: Approved PUD on 3 readings (6-0, Wynn out of room)
C14-97-0100	SF-2 to GR	Approved GR-CO allowing only certain uses (7-0)	Approved GR-CO & RR for floodplain w/conditions (7-0), subject to 25% maximum impervious cover; 1 st reading Approved GR-CO & RR w/ conditions (7-0); 2 nd /3 rd readings
C14-97-0098	SF-6 to SF-2	Approved staff rec. of SF-2 (7-0)	Approved SF-2-CO w/ conditions (7-0), subject to 25% maximum impervious cover; 1 st reading Approved SF-2-CO w/cond. (7-0); 2 nd /3 rd readings
C14r-86-045	TR1: SF-2, DR to LR TR2: SF-2, DR to GR	Approved LR (TR1) and GR (TR2), subject to conditions (9-0)	Approved LR, GR (6-0); 1 st reading Approved LR, GR; 2 nd /3 rd readings
C14r-86-044	SF-2, DR to LO	Approved LO (7-2)	Approved LO

RELATED CASES: C14r-86-045 - Zoning Site Plan
 C8-81-022.13 (87) - Subdivision

ABUTTING STREETS:

NAME	ROW	PAVEMENT	CLASSIFICATION	CAPITAL METRO	BICYCLE PLAN	SIDEWALKS
Capital Of Texas	390'	2@50'	Arterial	No	Yes	No
Bluffstone	100'	60'	Collector	No	Yes	No

CITY COUNCIL DATE: July 27, 2006

ACTION:

ORDINANCE READINGS: 1st

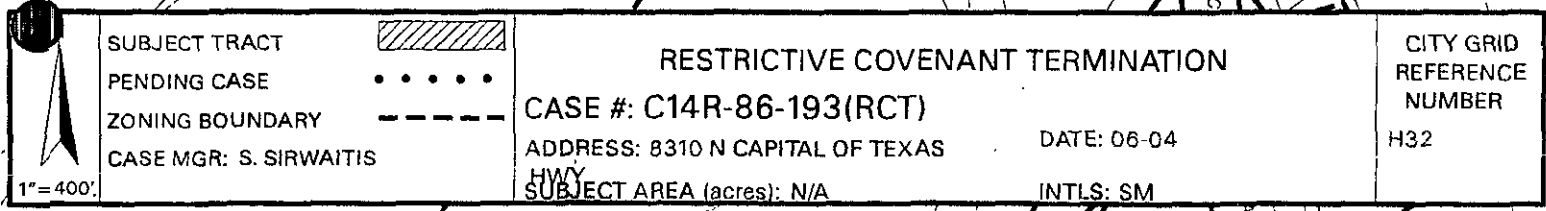
2nd

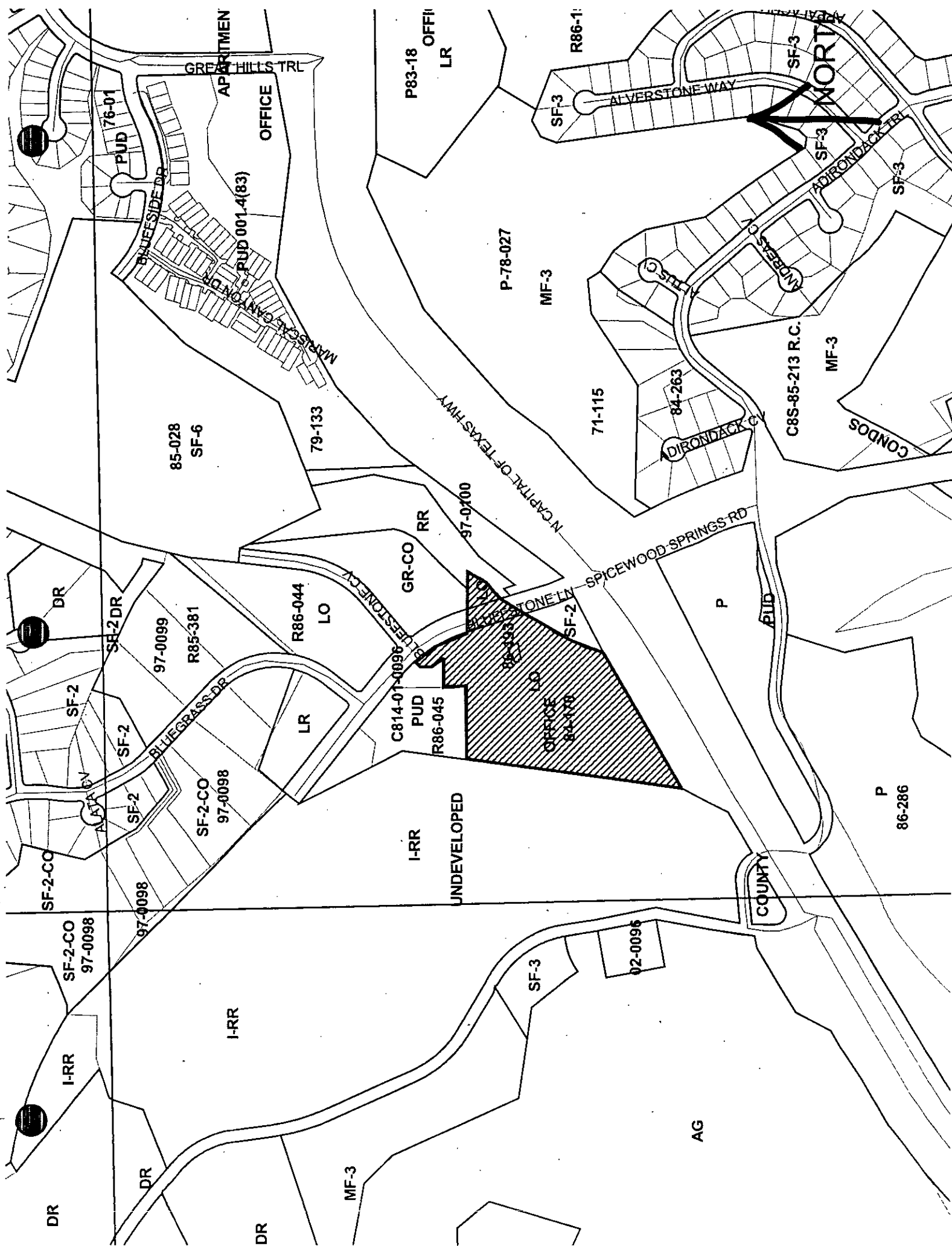
3rd

ORDINANCE NUMBER:

CASE MANAGER: Sherri Sirwaitis

PHONE: 974-3057,
sherri.sirwaitis@ci.austin.tx.us







- 10. Restrictive Covenant Termination:** **C814-01-0096(RCT) - Prominent Pointe II**
- Location: 5401-5505 Bluffstone Lane, Bull Creek Watershed
Owner/Applicant: Spicewood Springs Associates and Prominent Northpoint, L.P. (Mark McAllister)
Agent: Armbrust & Brown, L.L.P. (Amanda Morrow)
Request: Restrictive Covenant Termination
Staff Rec.: **Recommended**
Staff: Sherri Sirwaitis, 974-3057, sherri.sirwaitis@ci.austin.tx.us
Neighborhood Planning & Zoning Department

APPROVED STAFF'S RECOMMENDATION FOR RESTRICTIVE COVENANT TERMINATION; BY CONSENT.
[J.MARTINEZ, M.HAWTHORNE 2ND] (7-0) J.GOHIL, S.HALE - ABSENT

- 11. Restrictive Covenant Termination:** **C14R-86-193(RCT) - Prominent Pointe II**
- Location: 8310 North Capital of Texas Highway, Bull Creek Watershed
Owner/Applicant: Spicewood Springs Associates and Prominent Northpoint, L.P. (Mark McAllister)
Agent: Armbrust & Brown, L.L.P. (Amanda Morrow)
Request: Restrictive Covenant Termination
Staff Rec.: **Recommended**
Staff: Sherri Sirwaitis, 974-3057, sherri.sirwaitis@ci.austin.tx.us
Neighborhood Planning & Zoning Department

APPROVED STAFF'S RECOMMENDATION FOR RESTRICTIVE COVENANT TERMINATION; BY CONSENT.
[J.MARTINEZ, M.HAWTHORNE 2ND] (7-0) J.GOHIL, S.HALE - ABSENT

- 12. Rezoning:** **C14-06-0070 - Lakes at Northtown Tract 1**
- Location: East Howard Lane, Harris Branch Watershed
Owner/Applicant: NWC Howard and I-35, Ltd. (John Needham)
Agent: Longaro & Clarke, L.P. (Alex Clarke)
Request: LI-CO to SF-2
Staff Rec.: **Not Recommended**
Staff: Sherri Sirwaitis, 974-3057, sherri.sirwaitis@ci.austin.tx.us
Neighborhood Planning & Zoning Department

PULLED, DUPLICATE OF #8.

ARMBRUST & BROWN, L.L.P.

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300.
AUSTIN, TEXAS 78701-2744
512-435-2300

FACSIMILE 512-435-2360

AMANDA L. MORROW
(512)435-2368
AMORROW@ABUASTIN.COM

March 30, 2006

Joe Pantalione
Director
Watershed Protection & Development Review
505 Barton Springs Road
Austin, Texas 78701

Re: 8310 North Capitol of Texas Highway Restrictive Covenant Termination for property legally described as Lots 1 & 2 of the Owens II subdivision, Travis County, according to Plat Book 85, Page 140B ("Restrictive Covenant Termination") application

Dear Mr. Pantalione:

This firm represents and I am writing this letter on behalf of the Applicant in the above-referenced application. It is my client's intent to terminate the existing restrictive covenant that governs the above mentioned property. Currently, a rezoning application is on file with the City of Austin under case number C814-06-0054. The purpose of the zoning application is to rezone the properties at 8310 North Capitol of Texas Highway and 5401, 5405, 5505 Bluffstone Lane from LO/GR/PUD to PUD to allow a project which will cover all of the properties. The PUD proposes to combine the existing office development with a proposed office building and parking garage to provide a single unified development which will be superior to existing development regulations.

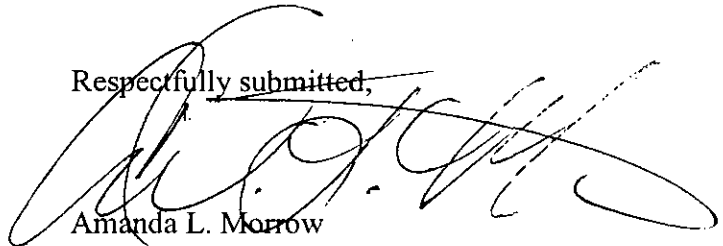
A copy of the existing restrictive covenant recorded in Volume 9965, Page 623 has been attached for your review. The existing restrictive covenant was prepared in conjunction with previous zoning case C14r-86-193, which limited the placement of the commercial development within the office buildings. By terminating the restrictive covenant, it will allow the flexibility to relocate the accessory commercial uses within the existing office building.

ARMBRUST & BROWN, L.L.P.

Page 2

Should you have any questions, comments or concerns please do not hesitate to contact me at (512) 435-2368.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'A. Morrow', is written over the typed name and title.

Amanda L. Morrow

Land Development Consultant

Attachment

cc: Sherri Sirwaitis

"Attachment A"

Zoning Case No. C14r-86-193

4 14 5676

RESTRICTIVE COVENANT

THE STATE OF TEXAS

COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, AUSTIN 360 LIMITED, a Texas limited partnership, is the owner of the following described property ("Property") located in Travis County, Texas:

All that certain tract, piece or parcel of land, lying and being situated in the County of Travis, State of Texas, described in Exhibit "A" attached hereto and incorporated herein for all purposes.

WHEREAS, the City of Austin, Texas, and the Owner of the Property have agreed that the Property should be impressed with certain covenants and restrictions running with the land, and desire to set forth such agreement in writing;

NOW, THEREFORE, in consideration of One and No/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin in hand to the Owner, the receipt and sufficiency of which is acknowledged, the Owner does hereby impress upon the Property, the following covenants and conditions which shall be considered to be covenants running with the land, and which shall be binding on the Owner, successors and assigns, as follows:

1. No more than 1100 square feet of the Property on the first floor, as illustrated on the site plan approved by the Austin City Council, shall be used for a restaurant (general) as defined in Section 1727 of the Austin City Code of 1981, as amended from time to time.

2. No more than 1200 square feet of the Property on the first floor, as illustrated on the site plan approved by the Austin City Council, shall be used for a health and physical fitness studio or a reducing salon, as defined in Section 1710 of the Austin City Code of 1981, as amended from time to time.

3. Notwithstanding conditions one and two, the restaurant and the health or physical fitness studio or reducing salon together shall not exceed 2200 square feet, and shall be limited to use by building tenants, their customers and clients, except for off-site delivery for the restaurant described in condition one.

4. If any person or entity shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors, or assigns, to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from doing so, and to collect damages for such actions.

5. If any part of this agreement or covenant shall be declared invalid by judgment or court order, the same shall in no way affect any other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

REAL PROPERTY RECORDS
Travis County, Texas

1

09965 0623

MAR 29 2006

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office.

Dana DeBeauvoir, County Clerk
By Deputy: J. MACHALD

violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

7. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) the owners of the Property at the time of such modification, amendment, or termination.

EXECUTED this the 7th day of October, 1986.

AUSTIN 360 LIMITED

By: Malcom Watson
Malcom Watson

Its: Agent and Representative

THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared MALCOM WATSON, an agent and representative of the partnership firm of AUSTIN 360 LIMITED, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that he executed the same as the act of AUSTIN 360 LIMITED, a limited partnership, for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 7th day of October, 1986.

NOTARY SEAL

Nancy L. Fuller
Notary Public, State of Texas

Nancy L. Fuller
Type or Print Name of Notary Public

My Commission Expires: 8/13/90

MAR 29 2006

09965 0624

Dana DeBeauvoir, County Clerk, Travis County,
Texas, do hereby certify that this is a true and
correct copy as same appears of record in my office.
Witness my hand and seal of office on
this 29th day of March, 2006.
By Deputy: P. MACHALA

FIELD NOTES FOR ZONING

BEING 2171 square feet of land out of the James Coleman Survey No. 25, Abstract No. 169, Travis County, Texas, also being out of Lot 2 of the Owen II Subdivision, a subdivision of record found in Book 85, Pages 140B-140C of the Plat Records of Travis County, Texas. The said 2171 square feet of land being more particularly described by metes and bounds as follows:

COMMENCING at an iron rod found in concrete on the north R.O.W. line of Capital of Texas Highway North, (Loop 360) at the southwest corner of the said Lot 2;

THENCE, N 28° 58' 35" E, 747.00 feet, traversing the interior of the said Lot 2, to a corner of an existing building for the PLACE OF BEGINNING, from which the westerly most northwest corner of the said Lot 2 bears N 46° 37' 21" W, 364.74 feet;

THENCE, traversing the interior of the said Lot 2, the following thirteen (13) courses and distances:

- 1.) N 44° 36' 38" E, 10.00 feet;
- 2.) N 45° 23' 22" W, 7.00 feet;
- 3.) N 44° 36' 38" E, 10.00 feet;
- 4.) N 45° 23' 22" W, 3.00 feet;
- 5.) N 44° 36' 38" E, 30.00 feet;
- 6.) N 89° 36' 38" E, 14.14 feet;
- 7.) S 45° 23' 22" E, 28.50 feet;
- 8.) S 44° 36' 38" W, 62.00 feet;
- 9.) N 45° 23' 22" W, 16.00 feet;
- 10.) S 44° 36' 38" W, 1.50 feet;
- 11.) N 45° 23' 22" W, 2.50 feet;
- 12.) N 44° 36' 38" E, 3.50 feet;
- 13.) N 45° 23' 22" W, 10.00 feet to the PLACE OF BEGINNING, containing 2171 square feet of land, more or less.

Field Notes prepared from record and field data.

CUNNINGHAM-GRAVES, INC.

Gregory J. Clements, R.P.S. #4197

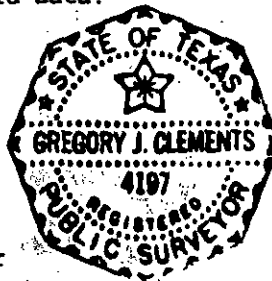
August 12, 1986

CGI Job No. 387-0001.0100

Field Notes prepared by: Virginia Hiller

OWENII/A-14/da

09965 0625



Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office.

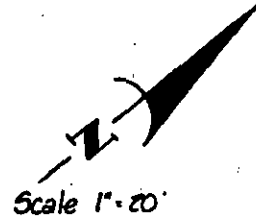
By Deputy
MACHADO

MAR 29 2006

EXHIBIT "A"

PREPARED BY
CUNNINGHAM - GRAVES, INC.
 AUSTIN, TEXAS

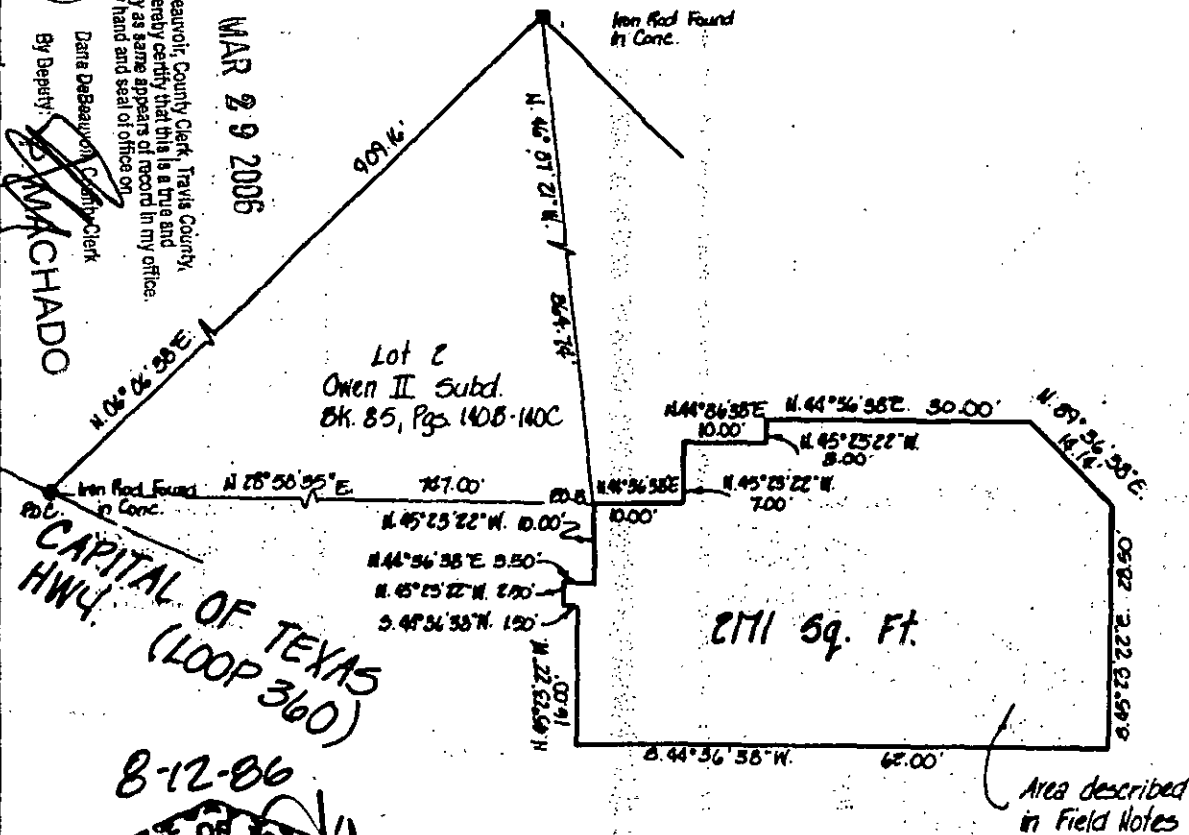
August 12, 1986
 Job No. 387-0001.0100



I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on

Dana DeBeauvoir, County Clerk
 By Deputy: **MACHADO**

MAR 29 2006



9290 59660

FILED

Nov 10 3 15 PM '86

Dana DeBeauvoir

TRAVIS COUNTY CLERK

RECORDER'S MEMORANDUM:

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me, and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas on

NOV 10 1986



Dana DeBeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

MAR 29 2006

I, Dana DeBeauvoir, County Clerk, Travis County,
Texas, do hereby certify that this is a true and
correct copy as same appears of record in my office.
Witness my hand and seal of office on



Dana DeBeauvoir, County Clerk
By Deputy: *[Signature]* MACHADO

PLEASE RETURN TO:

CITY OF AUSTIN
DEPT. OF LAW
P. O. BOX 1088
AUSTIN, TEXAS 78767-8828

09965 0627

TERMINATION OF RESTRICTIVE COVENANT
FOR
ZONING CASE: C14r-86-193

OWNER: Prominent Northpoint, L.P., a Texas limited partnership

ADDRESS: 901 Mopac Expressway South, Bldg. One, Suite 200, Austin, Texas 78746

CITY: The City of Austin, a home-rule city, municipal corporation and political subdivision of the State of Texas, in Travis County, Texas.

CITY COUNCIL: The City Council of the City of Austin.

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

WHEREAS, Austin 360 Limited, a Texas limited partnership, as owner of all that certain property described in Zoning Case No. C14r-86-193, consisting of a 2,171 square foot tract of land, more or less, out of the James Coleman Survey No. 25 and Lot 2, Owen II Subdivision, Travis County (the "Property"), as more particularly described in the restrictive covenant recorded in the Real Property Records of Travis County, Texas, in Volume 9965, Page 623, (the "Restrictive Covenant"), imposed certain restrictions and covenants on the Property by the Restrictive Covenant of record; and,

WHEREAS, the Restrictive Covenant provided that the covenant could be modified, amended, or terminated by joint action of both a majority of the members of the City Council and the Owner of the Property at the time of such modification, amendment or termination; and,

WHEREAS, Prominent Northpoint, L.P., a Texas limited partnership, as sole and current owner of the Property, now desires to terminate the Restrictive Covenant; and,

WHEREAS, the City Council and the Owner, agree the Restrictive Covenant should be terminated;

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants, and agreements set forth in this covenant, the City of Austin and the Owner agree as follows:

1. The Restrictive Covenant is terminated by this termination. Each and every one of the terms, conditions, and provisions of the Restrictive Covenant, as set forth in the Restrictive Covenant, shall have no force or effect on and after the effective date of this termination.
2. The City Manager, or her designee, shall execute, on behalf of the City, this Termination of Restrictive Covenant for Zoning Case No. C14r-86-193 (the "Termination of Restrictive Covenant") as authorized by the City Council of the City of Austin. This Termination of Restrictive Covenant shall be filed in the Official Public Records of Travis County, Texas, which will terminate the document of record in Volume 9965, Page 623, Official Public Records, Travis County, Texas.

EXECUTED this the _____ day of _____, 2006.

OWNER:

**Prominent Northpoint, L.P.,
a Texas limited partnership**

By: Aspen Growth Properties, Inc.,
a Texas corporation,
its General Partner

By: _____
Mark McAllister,
President

CITY OF AUSTIN:

By: _____
Laura J. Huffman,
Assistant City Manager
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2006, by Mark McAllister, President of Aspen Growth Properties, Inc., a Texas corporation, general partner of Prominent Northpoint, L.P., a Texas limited partnership, on behalf of the corporation and limited partnership.

Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2006, by Laura J. Huffman, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of the municipal corporation.

Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Paralegal